

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of : Dale et al.
Serial No. : 10/540,730
For : Coatings
Filed : November 18, 2003
Examiner : Sakelaris, Sally A.
Art Unit : 1797

Mail Stop Amendment
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

ELECTION AND RESPONSE

The following Remarks are submitted in response to the Restriction Requirement mailed May 13, 2009 in the above-referenced application. A Petition for a two-month extension of time pursuant to 37 C.F.R. § 1.136(a) is submitted herewith extending the date of response to August 13, 2009.

Applicants hereby elect Invention II corresponding to claims 26-30, drawn to a device with an immobilized sol gel biomolecule, classified in Class 422, subclass 79.

Applicants traverse the present Restriction Requirement on the basis that the Examiner's support for the Restriction is improper. The Examiner relates Inventions (I) and (II) as product and process of using as set forth in MPEP § 806.05(h). However, Inventions (I) and (II) are related as process of making and product made.

According to MPEP § 806.05(f):

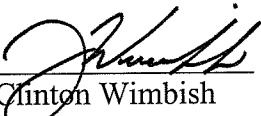
A process of making and a product made by the process can be shown to be distinct inventions if either or both of the following can be shown: (A) that the process *as claimed* is not an obvious process of making the product and the process *as claimed* can be used to make another materially different product; or (B) that the product *as claimed* can be made by another materially different process.

Applicants respectfully assert the Examiner has not provided documentation or other factual evidence satisfying the requirements of MPEP § 806.05. As a result, Applicants assert the present Restriction Requirement is improper and respectfully request its withdrawal.

The Examiner is respectfully invited to contact J. Clinton Wimbish at 704.338.5021 to discuss any matter related the present application.

Respectfully submitted,

8/13/09
Date


J. Clinton Wimbish
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